

PATRIOT ACT

Mr. UDALL of New Mexico. Madam President, I know Senator BLUMENTHAL is coming to speak and Senator KERRY ended a little bit early. I wish to get up for a couple minutes now, and when Senator BLUMENTHAL comes in I will yield to him because he has some time reserved.

I wish to talk this morning a little bit about the procedure and what we have gone through, in terms of the PATRIOT Act.

I am very discouraged to see the path we are headed down in terms of the PATRIOT Act. I was in the Congress, as the Presiding Officer knows, when we voted almost 10 years ago on the PATRIOT Act. It was a sad occasion then because it was right after 9/11 and that horrible tragedy had happened to our country. But we rushed, in a very big way, to move forward with a piece of legislation, the so-called PATRIOT Act. That act ended up being something I think many of us regret.

I wish to read a short passage from the Washington Post at the time, which I think showed the haste in which we acted, where we infringed on our constitutional rights, and I think the Post says it all. They noted:

Members of both parties complained they had no idea what they were voting on, were fearful that aspects of the . . . bill went too far—yet voted for it anyway.

I can tell you that, at the time, that is the way it was. We were on the floor, we had the vote, and nobody knew what was in the bill. I remember one Congressman waiving a copy of the bill, saying there is only one copy on the floor and it is hot off the Xerox machine. So it is unfortunate we moved so quickly, with so much haste.

Almost 10 years later, we have not had the debate we need to have on this piece of legislation. The greatest deliberative body has not weighed in with amendments. We have not moved forward in a serious way to try to tackle this piece of legislation that is so important to our country, important to our freedom, and important to our liberty.

What are the problems we should be dealing with? Just very quickly—I know my colleague, Senator BLUMENTHAL, is here, so I will quickly move on. But two things have happened that indicate we have some serious problems with the PATRIOT Act. No. 1, in March of 2007, the inspector general of the Department of Justice, in a report concluded that “the FBI engaged in serious misuse of national security letter authority.” The report also said that “in many instances, the FBI’s misuse of national security letters violated NSL statutes, Attorney General guidelines, or the FBI’s own internal policies.”

So there we have an inspector general telling us that the executive branch, with the piece of legislation, moved way beyond where they should. That is something we should take a hard look at. I have an amendment, and I know others do, on that.

There have also been courts that have looked at parts of the PATRIOT Act and found that act to be unconstitutional. It is incumbent upon us, when we have a ruling such as that, to look at it and offer amendments and try to make changes.

I harken back to what I remember reflecting on, on that day when we passed the act. Benjamin Franklin—talking about our precious freedom and liberty—said this, and I will paraphrase. He said something along these lines: Those who would sacrifice liberty for security deserve neither. So that is where we are today.

The so-called PATRIOT Act was enacted nearly a decade ago. Hastily passed by a Congress left reeling in the wake of a devastating terrorist attack on our Nation. Its supporters described it as a way to protect our Nation from similar attacks in the future. But this far-reaching piece of legislation went much farther than that. The PATRIOT Act’s most enduring legacy is this: It gave the Federal Government the power to undermine the constitutional right to privacy of law-abiding citizens.

I was a Member of the House of Representatives at the time. One of only 66 Members to vote against passing the PATRIOT Act. It was an unpopular vote at the time. But when the details of the new law were examined, its breaches on our civil liberties became clearer. And the truth came out. As I have said, the Washington Post noted, “members of both parties complained they had no idea what they were voting on, were fearful that aspects of the . . . bill went too far—yet voted for it anyway.”

I also voted against the reauthorization of the PATRIOT Act in 2006, as well as the FISA Amendments Act of 2008. In February, I once again opposed the extension of three controversial provisions of the PATRIOT Act: roving wiretaps . . . government access to “any tangible items” such as library and business records . . . and the surveillance of targets who are not connected to an identified terrorist group.

Back in 2001, I said on the House floor that I was “unable to support this bill because it does not strike the right balance between protecting our liberties and providing for the security of our citizens.”

I went on to explain that “the saving grace here is that the sunset provision forces us to come back and to look at these issues again when heads are cooler and when we are not in the heat of battle.”

And that is exactly what we should do. To govern in a post-9/11 world, we have to strike a delicate balance: We must prevent the terrorist actions of some, without infringing on the constitutional guarantees of the vast many. We are failing to strike that balance today by forcing reauthorizations of the PATRIOT Act without scrutinizing the long-term ramifications of the law.

Voting for the PATRIOT Act in the shadow of the 9/11 attacks was justifi-

able for many; that horrific day created an unparalleled sense of urgency. Today, we are once again up against a sense of urgency to renew the controversial provisions of the law set to expire this week.

But it’s no longer due to a recent attack. Instead, the urgency has been created by the false argument that our Nation will be more vulnerable to attack if we dare to let the provisions expire.

Let’s be honest in this debate—not act hastily out of false fears. Even if the provisions expire, the sunsets contain an exception for ongoing investigations. And the government can continue to use those provisions beyond this week.

Perhaps the real fear is that the time it would take for real debate might postpone our Memorial Day recess. We were promised a real debate on this reauthorization, and we should have it!

With a decade of hindsight, more voices from very different places on the political spectrum agree—the entire law bears scrutiny and debate. We can no longer neglect our duty. It is our responsibility to review the full scope of a law with such serious constitutional challenges before rushing to reauthorize it, again.

I have filed two amendments that I hope the Senate will consider and vote on.

The first is very simple. It extends the expiring provisions until September so that we can have a real, substantive debate and an open amendment process. This is what we thought the 3-month extension passed in February was intended to do, but adequate floor time was never scheduled and we have been extremely limited in our ability to offer amendments.

This is by no means an ideal solution. In fact, I voted against the short-term extension in February. But if our options are an extension until September and an extension until 2015, I am willing to accept the lesser of two evils. I thank Senator MERKLEY for cosponsoring this amendment.

The second amendment I have filed would reinstate a sunset provision for national security letters. This provision was in Senator LEAHY’s bill that was reported out of his committee and is in his amendment, but I feel strongly that it should also be considered as a stand-alone because of the importance of this issue.

National security letters do not require a court order. They are a form of administrative subpoena issued by FBI agents and other officials. A March 2007 report by the Department of Justice inspector general “concluded that the FBI engaged in serious misuse of NSL authority.”

It also said that “in many instances, the FBI’s misuse of national security letters violated NSL statutes, Attorney General guidelines, or the FBI’s own internal policies.”

I believe that there must be a sunset provision for NSLs to ensure that Congress periodically reevaluates this

power and is certain that it is not being abused.

I have also signed on as a cosponsor to several of my colleagues' amendments. Let me just comment briefly about some of these.

In addition to my NSL amendment, I cosponsored Senator PAUL's amendment that prohibits any officer or employee of the United States from issuing an NSL unless a FISA court judge finds that probable cause exists to issue the NSL. This would bring NSLs into compliance with the plain text of fourth amendment.

I am pleased to join Senators MARK UDALL and PAUL on an amendment that would eliminate the possibility of "John Doe" roving wiretaps that identify neither the person nor the phone to be wiretapped. This would protect innocent Americans from unnecessary surveillance and was part of the JUSTICE Act that I cosponsored in the last Congress.

I have also cosponsored MARK UDALL's amendment that would direct the attorney general to only delegate the authority for approving "lone wolf" surveillance to the deputy attorney general. It would also require the attorney general to provide notice to Congress of applications for "lone wolf" surveillance.

Finally, with Senator SANDERS, I have cosponsored an amendment that exempts libraries and bookstores from section 215 orders and NSLs. A similar amendment passed the House 287-238 in the 2005 PATRIOT Act debate, but was later dropped in conference.

The ACLU, the American Booksellers Association, the American Library Association, and the Campaign for Reader Privacy all support this amendment.

All of these amendments are designed to protect the civil liberties of all Americans and each deserves a full debate on the floor and an up-or-down vote by the Members of this body. Failing to do so is once again failing to provide the adequate time and consideration of this far-reaching legislation.

As a former Federal prosecutor and New Mexico's attorney general, I am familiar with the needs of law enforcement to pursue suspects and a strong supporter of law enforcement. But I also believe that our Constitution must be guarded against encroachment, even in the name of security.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut is recognized.

Mr. BLUMENTHAL. Madam President, I ask unanimous consent to extend my remarks to 15 minutes, if necessary.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from Connecticut.

(The remarks of Mr. BLUMENTHAL pertaining to the introduction of S. 1060 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. BLUMENTHAL. Madam President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from South Dakota.

ENTITLEMENT SPENDING

Mr. THUNE. Madam President, last week I came to the Senate floor to talk about the crushing burden of debt that will soon be coming our way because of government spending, mainly driven by entitlement programs. I noted that our unfunded liabilities in Medicare and Social Security are over \$40 trillion. In fact, last week we received the reports from the Medicare and Social Security trustees which noted that Medicare is already running a cash deficit of about \$46 billion. Social Security is running a cash deficit of about \$32 billion.

For those who think we do not need to do anything because the so-called trust funds are not going to be in trouble until some point into the future, I think the important point to remember is that the trust funds and the IOUs that are the trust funds are not an economic asset that can pay cash benefits. At some point there is either going to have to be a massive tax increase, a huge reduction in benefits, or an incredible amount of additional borrowing.

What we project will happen with Social Security at some point in the future is that there will be about a 20, 25 percent reduction in benefits when we hit that wall, which suggests we ought to be taking steps right now to avoid that. The important point is, when we start seeing cash deficits where the payroll taxes that are coming in no longer exceed the amount of benefits they are paying out but, rather, are running deficits, that also adds to the overall deficit we are dealing with as a country.

We do not have the luxury of time. We cannot afford to wait. This is an issue that is upon us. Social Security and Medicare reforms are issues that need to be undertaken. If we do not do that, as I mentioned last week as well, we will see enormous increases in the amount of debt and the amount of deficits as a percentage of our GDP.

In fact, in the year 2035, if we do not change our ways, the amount of government spending—and this is under the current projection, which I believe is very conservative, and probably these numbers could be much worse—would comprise 35.2 percent of GDP. Government spending would comprise 35.2 percent of GDP, which is 60 percent higher than the historical average. The historical average of what the Federal Government spent as a percentage of our entire economic output for the last 40 years has been 20.6 percent. This year it is over 24 percent. If we stay on this current trajectory, as I said, in the year 2035, based on what I believe are very conservative assumptions—and this could be much worse than that—we would be looking at over 35 percent of our entire economy spent just on the Federal Government.

As I said, that is 60 percent higher than the historical average. In the

same year, deficits would be about 16 percent of GDP, and debt to GDP would be 185 percent. We would actually have a cumulative debt that is almost twice the size of our entire economic output, our entire GDP for that year.

These are more than just numbers for economists to look at; these have real impacts in real time. They affect people across the country today. I wanted to point out again, as I have mentioned in the past, the study done by economists Rhinehardt and Rogoff, which took a good look at countries, and particularly developed countries, that have acquired or accumulated the sort of debt level we are looking at in this country and the impact that has had on their economies. And in their analysis and their study, they came to the conclusion that when you reach a certain level of debt to GDP—in this case, 90 percent debt to GDP—you lose 1 percentage point of economic growth. In other words, economic growth will be 1 percentage point less than it would otherwise be because of that high GDP debt level the country is sustaining. They say that is at 90 percent. If we look at where we are today debt to GDP, we are about 93 to 94 percent. According to the White House's own economist, every time you lose a percentage point of economic growth, it costs you about 1 million jobs.

So having the kind of debt level we are carrying today creates a cloud over our economy, reduces economic growth, and reduces jobs. It is costing us job creation in our economy, which I think is what most of us believe we should be focused on, and if we are going to focus on jobs, we have to say there is a correlation between spending, debt, and jobs. I believe the sooner we acknowledge that, the quicker we address that, the better off we will all be and the sooner we will see the economy start to recover and expand and create jobs again. That is the impact that is happening now, and it only gets worse if changes aren't made.

When the government borrows money, obviously there is an impact in the private economy: there is less money for private companies and individuals to invest in equipment, plants, housing, and training. It crowds out these investments and instead allocates money—spends money—on less efficient, less necessary, duplicative, and oftentimes downright wasteful programs and projects.

If we don't get our arms around this level of spending and debt, it also means higher interest rates for individuals who want to borrow to buy a home.

It is clear to individuals and businesses across the country—even if it isn't clear to everyone here in Congress—that the government cannot continue to spend ever-increasing amounts of money without raising taxes. That creates uncertainty among individuals and businesses across this country and acts as a disincentive for them to invest. So because you have